

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges a series of injuries from November 1993 through August 16, 1994, to her left wrist and arm, right arm and shoulder. Claimant acknowledges although the symptoms began in 1993, she did not tell her employer of her problems until August 16, 1994, due to her fear of losing her job.

Claimant acknowledged that she knew her condition was work related because in November 1993 she advised co-workers of her symptoms and discussed their relationship to her employment. Claimant also sought medical treatment with her personal doctor from November 1993 through August 1994. During this time claimant was also treated for headaches, blurred vision, cramping, abdominal pain, poor sleep, and chest pains, all of which were personal in nature and not related to her job. The medical records do not indicate clearly whether claimant's wrist and shoulder conditions were related to her employment. Dr. Tyann Hamedi found claimant's condition did not improve when claimant was off work. He also noted a history of arthritis in claimant's family and diagnosed either rheumatoid arthritis or fibromyalgia. Dr. Hamedi opined neither condition was related to claimant's employment.

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 44-501(a).

This must be established by a preponderance of credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

The only medical evidence which specifically eludes to claimant's condition, as it relates to her employment, are the records of Dr. Hamedi. Dr. Hamedi clearly states that claimant's condition is not related to her work. The Appeals Board finds claimant has not proven by a preponderance of credible evidence that she suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated November 16, 1994, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William W. Hutton, Attorney at Law, Kansas City, KS
Stephanie Warmund, Attorney at Law, Kansas City, Mo
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director